

Case No. ENF/16/00246/UDRU

Grid Ref: 290233 122951

Address:

West Loosemoor Farm, Oakford, Tiverton, Devon

Alleged Breach:

Change of use of land from agriculture to mixed use agriculture and the siting of a caravan for human habitation.

Recommendation:

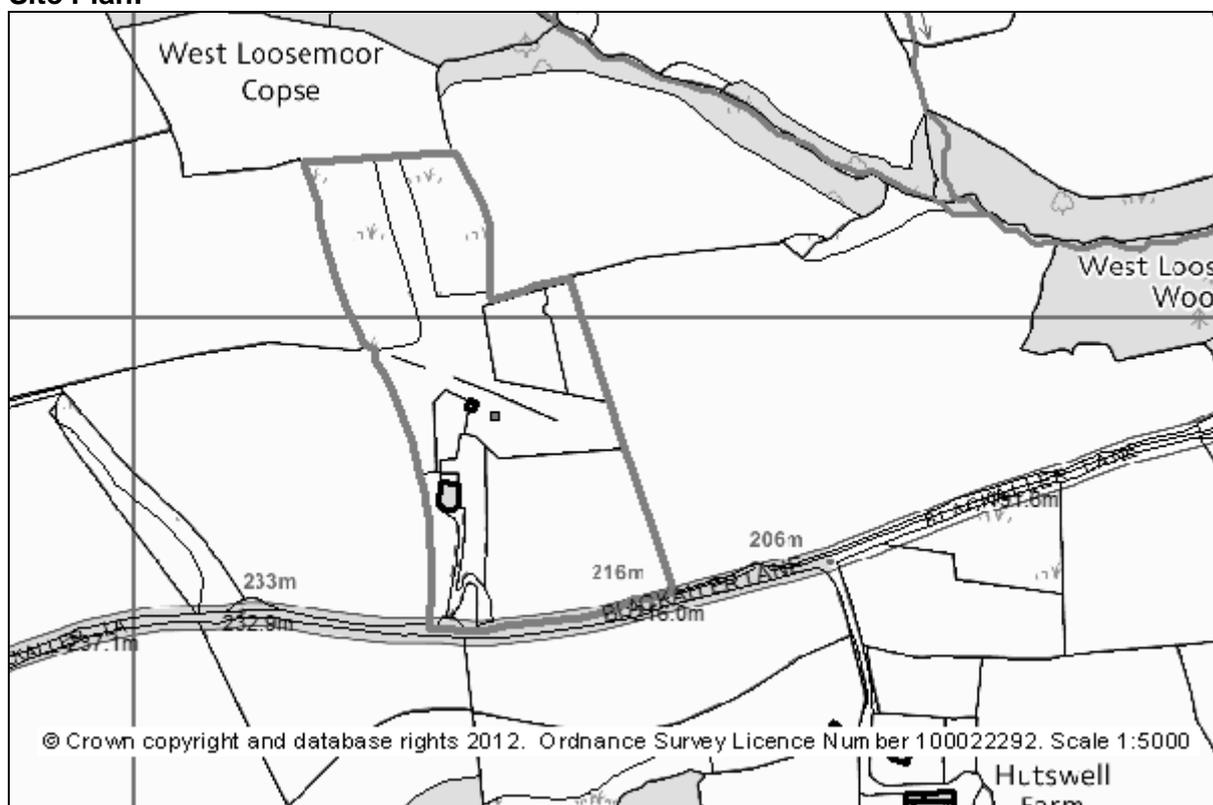
That Members, having regard to the provisions of the Mid Devon Development Plan and all other material planning considerations in accordance with Section 172, Town and Country Planning Act 1990, ("the Act") should grant authority to the Legal Services Manager take all such steps and action necessary to secure the cessation of the unauthorised change of use and the removal of the caravan and associated domestic paraphernalia from the site, including the issue of an enforcement notice and prosecution and/or Direct Action in the event of non-compliance with the notice.

Site Description:

West Loosemoor Farm, Oakford, Tiverton, Devon

The site is located within the parish of Oakford, approximately 1 mile north-northwest of the village of Oakford. It is in the open countryside lying to the east of the B3227 South Molton Road.

Site Plan:



Site History:

96/00485/FULL	Erection of brood house for free range chickens provision of new vehicular access and associated landscaping works	PERMIT
05/01354/DET	Query regarding application 96/00485/FULL	CLOSED
05/02151/FULL	Removal of condition (1) of planning permission 4/39/96/0485 to allow permanent retention of poultry brood house and associated infrastructure and works	PERMIT

Development Plan Policies:

National Planning Policy Framework

Mid Devon Core Strategy (Local Plan 1)

COR18 - Countryside

Mid Devon Local Plan Part 3 (Development Management Policies)

DM10 - Rural workers dwellings

DM31 - Planning enforcement

Reasons/Material Considerations:

It appears to your Officers that the above breach of planning control has occurred within the last 10 years. Evidence strongly suggests there was no caravan on the site around 2005/2006. This is clearly visible from the aerial photograph data held from this period. In addition, in late October 2005 the Council's Principal Planning Officer made a site visit in connection with application 05/02151/FULL. The Officer report provides a detailed description of the whole site, referring to it overgrown and having the feeling and appearance of not being used for some time. There was no mention of a caravan being on site at the time of this application.

In October 2016 the Revenues Team had a conversation with the caravan owner about whether payment of Council Tax was necessary. At this time the owner indicated the caravan had been there since 2009, and whilst registered to pay Council Tax on a property elsewhere, the owner occupied the caravan for 2-3 nights per week but wanted to move into the caravan on a permanent basis.

Planning Enforcement were made aware of the situation in October 2016 and, having confirmed that a breach of planning had occurred, contacted the owner to discuss the removal of the caravan. The owner of the caravan was advised by telephone and letter that the change of use of the land (from agriculture to a mixed use agriculture and the siting of a caravan for human habitation) was unauthorised and that because the caravan was not the occupier's main or sole residence that the unauthorised use should cease immediately and the caravan be removed from the land. In October 2016 the owner was given a deadline of January 2017 by which to resolve the breach.

A further site visit was undertaken in February 2017 and it was noted that the caravan remained in situ and formal enforcement was required.

A brief period of inactivity followed due to a lack of resource within the Enforcement Team.

At the end of July 2017 the matter was chased by the Revenues Team who had noted the caravan was still on site. A further site visit was undertaken in early August and the caravan was still on site and appeared to be occupied. A letter was sent to the owner on 1st August 2017 requesting the caravan was removed from the land within 28 days or the Council would commence formal enforcement action.

A further site visit was undertaken on 30th August 2017 and it was confirmed the caravan was still on site and still appeared to be occupied.

An email was received from the owner of the land jointly with the owner of the caravan stating there was no need to remove the caravan from the land because caravans had been on site since 2003 (another caravan in another location) and since 2005/2006 (the caravan that is the subject of this enforcement investigation). It was stated in the email that the caravan was necessary as somewhere warm and dry to change clothes whilst waiting for vets and other trade persons, and somewhere to stay in bad weather.

A response was sent to both the owner of the land and the owner of the caravan advising that the use of the land remained unauthorised until such times as either planning permission were granted for a temporary agricultural worker's dwelling; a certificate of lawful use were granted or the unauthorised use ceased and the caravan removed from the land.

To date neither planning permission nor a certificate of lawful use have been applied for and the caravan remains on site.

Human Rights and Equality Issues:

The expediency of Enforcement action has been assessed with reference to the National Planning Policy Framework (NPPF). Expediency has also been assessed with regard to the statutory Development Plan, comprising the Core Strategy 2026 (July 2007), the Allocations and Infrastructure Development Plan Policies (January 2011) the Local Plan Part 3 Development Management Policies (October 2013) the Proposed Local Plan Review Policies 2013 - 2033.

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies.

In addition, Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

The power to issue an Enforcement Notice is discretionary and should only be used where the Local Planning Authority are satisfied that there has been a breach or breaches of planning control. It must also be satisfied that it is expedient to issue the Notice having regard to the provisions of the Development Plan and to any other material considerations. Consequently the Council must decide based on the particular circumstances of each individual case the question of expediency. The decision to take enforcement action must be reasonable and not based on irrational factors or taken without proper consideration of the relevant facts and planning issues or based on non-planning grounds.

Reasons for Issuing the Notice:

The Council does not consider the unauthorised use has been carried on continuously for a period of 10 years and therefore the serving of an Enforcement Notice is necessary before the matter becomes immune from enforcement due to the passage of time.

The current unlawful use of the site, for the siting of a caravan for residential accommodation without a strong evidence base to demonstrate otherwise, is considered to be contrary to policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1) and policies DM10 and DM31 of the Mid Devon Local Plan Part 3.